



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/154,646 09/17/98 CUPP

C F97.2391

EXAMINER

IM62/0517

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85TH FLOOR SEARS TOWER  
CHICAGO IL 60606

HENDRICKS, K  
ART UNIT PAPER NUMBER

1761  
DATE MAILED:

*3*

05/17/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/154,646

Applicant(s)

Examiner

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, for example, recites the terms “comprising a matrix including...”. This renders the claims indefinite, as the metes and bounds of the claim are unclear. The term “including” is not set as to open- or closed-type language. It is suggested that the claims utilize accepted Patent terms, such as “comprising” (open), or “consisting of” (closed). If the invention is to “comprise” the elements, it need not “include” them, as well. If the food is to “comprise” the matrix, then the matrix should also “comprise” the recited elements.

Similarly, claim 20 uses the phrases “having” and “including”, which render the claim indefinite, as it is unclear as to what is encompassed by these terms.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5-7,13-15 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Simone et al.

Simone et al. disclose an edible pet food product comprising a matrix which comprises cellulose (insoluble) fiber, gelatinized starch and protein components (see col. 3), and a humectant

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such as glycerin (col. 5). The dried sections of this product were then subdivided into pieces which were 2.75 inch in length, 1 inch wide, and .25 inch thick, for the final product (col. 8). Thus, the claimed invention is anticipated by the reference.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 8-12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simone et al., as cited above, in view of Kazemzadeh.

Simone et al. also teach that the cellulosic fiber materials of the pet food are used in the range of about 20-50% by weight of the final product.

Kazemzadeh teach of a semi-moist, chewy pet food, which may be in the form of pellets or bits. The product comprises a cohesive matrix containing proteins, starches, carbohydrates and cellulose. The starch is gelatinized. At column 7, the reference states that the product contains about 9-28% filler, based on total weight of the product. The filler component may include starches, sugars, and fibers such as cellulose or bran.

Thus, it would have been obvious to one of ordinary skill in the art to have utilized the teachings of both Simone et al. and Kazemzadeh, to have produced the claimed invention of a dried pet food with similar qualities to that of Simone et al., in any common size and/or shape, with a variable amount of insoluble fiber such as cellulose. Fiber is often used as a filler, as taught

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by Kazemzadeh, and given the teachings of the two references and the state of the prior art, may range widely in amount, based upon the other ingredients utilized, as well as the moisture content and texture desired, and would have been within the ordinary level of skill in the art to determine and utilize.

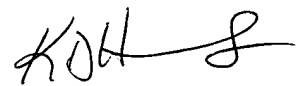
*Conclusion*

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703) 308-3535.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.

  
KEITH D. HENDRICKS  
PRIMARY EXAMINER  
GROUP 1800  
1700